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 Plaintiff in Pro Per

THE UNITED STATES DISTRICT COURT
 FOR NORTHERN CALIFORNIA

	)	Case No. 3:18-cv-03748-JCS
Tatyana E. Drevaleva)	
<i>Plaintiff,</i>	)	Reply to Zack's Opposition to my First
vs.	)	and Second Motions to Strike Zack's
1) The U.S. Department of Veterans	)	June 04, 2021 Answer to My Original
Affairs	)	June 25, 2018 Complaint
2) Mr. Denis Richard McDonough in his	)	in Its Entirety or Partially,
capacity as a Secretary of the U.S.	)	F.R.C.P. Rule 12(f.)
Department of Veterans Affairs)	
810 Vermont Avenue, NW,)	
Washington, D.C. 20420)	
<i>Defendant</i>	)	Date: July 30, 2021
Facility:	)	Time: 09:30 AM
New Mexico VA Healthcare System	)	Location: Courtroom F – 15th Floor
1501 San Pedro Drive, S.E.	)	450 Golden Gate Avenue,
Albuquerque, NM, 87108)	San Francisco, CA 94102
)	Judge: The Hon. Chief Magistrate
)	Judge Joseph C. Spero

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MEMORANDUM OF POINTS AND AUTHORITIES

Introduction.

Plaintiff Tatyana Drevalova is replying to AUSA Zack's frivolous and unauthorized July 01, 2021 filing named "DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTIONS TO STRIKE."

Statement of Facts.

The facts of this case are undisputed. On June 25, 2018, I filed a Complaint No. 3:18-cv-03748-JCS against the following Defendants: 1) The U.S. Department of Veterans Affairs, 2) Mr. Peter O'Rourke, Acting United States Secretary of Veterans Affairs (**ER 03748 Vol. 1, page 2.**)

On August 08, 2018, the United States Attorney Mr. Alex Tse was served with a Summons and a Complaint No. 3:18-cv-03748-JCS (Doc. No. 22.)

On August 24, 2018, Attorney General Mr. Jeff Sessions was served with a Summons and a Complaint No. 3:18-cv-03748-JCS (Doc. No. 25.)

On August 20, 2018, Secretary of the U.S. Department of Veterans Affairs Mr. Peter O'Rourke was served with a Summons and a Complaint No. 3:18-cv-03748-JCS (Doc. No. 26.)

On August 20, 2018, the U.S. Department of Veterans Affairs was served with a Summons and a Complaint No. 3:18-cv-03748-JCS (Doc. No. 27.)

In my Original June 25, 2018 Complaint No. 3:18-cv-03748-JCS, I named the following causes of action:

- 1) Discrimination cases of action
- 2) Libel and the Intentional Infliction of Emotional Distress. Please, notice that I didn't label these causes of action as the F.T.C.A. causes of action.
- 3) The violations of the Substantive Due Process Clause and the Procedural Due Process Clause of the Fifth Amendment to the U.S. Constitution.

Therefore, because my Original June 25, 2018 Complaint No. 3:18-cv-03748-JCS was **not** an F.T.C.A. lawsuit, and because **Secretary** O'Rourke was named a Defendant and was served with a Summons and a Complaint, the proper procedure was described at 38 CFR § 14.514 - Suits by or against United States or Department of Veterans Affairs officials; indemnification of Department of Veterans Affairs employees,

“(a) Suits against United States or Department of Veterans Affairs officials. When a suit **involving any activities of the Department of Veterans Affairs** is filed against the United States **or the Secretary** or a suit is filed against any employee of the Department of Veterans Affairs in which is involved any official action of the employee, **not covered by the provisions of §§ 14.600 through 14.617**¹, a copy of the petition will be forwarded to the General Counsel who will take necessary action to obtain the pertinent facts, cooperate with or receive the cooperation of the Department of Justice and, where indicated, advise the Regional Counsel of any further action required.”

Therefore, the plain language of 38 CFR § 14.514(a) clearly and undoubtedly informs that when a lawsuit concerning any activity of the U.S. Department of Veterans Affairs is filed against the Secretary, the proper procedure is as follows:

- 1) A copy of my Complaint will be forwarded to the General Counsel
- 2) The General Counsel will take necessary action to obtain **the pertinent facts**
- 3) **After obtaining the pertinent facts**, the General Counsel will cooperate with the U.S. Department of Justice
- 4) The General Counsel will advise the Regional Counsel about whether or not any further action is required.

¹ Federal Tort Claims (38 CFR §§ 14.600 - 14.605) and Administrative Settlement of Tort Claims Arising in Foreign Countries (38 CFR §§ 14.615 - 14.617.)

1 However, please, notice that on October 09, 2018 Assistant U.S. Attorney Ms. Clair
 2 Cormier filed a Motion to Dismiss my Original Complaint No. 3:18-cv-03748-JCS (Doc. No. 34)
 3 (**ER 03748 Vol. 2, pages 342-352.**)

4 Please, read the plain language of the Motion to Dismiss (**ER 03748 Vol. 2, from page**
 5 **344, line 16 to page 345, line 27**),

6 **“I. FACTS²**

7 Plaintiff, Tatyana E. Drevaleva, was employed as a medical instrument technician at the
 8 Raymond G. Murphy Veterans Affairs Medical Center (“VAMC”) in Albuquerque, New
 9 Mexico. Complaint at p. 2. After working at the VAMC for about a month and a half, Plaintiff
 10 requested leave without pay (“LWOP”) and travelled to Russia. **Complaint at p. 3, 6.** Plaintiff
 11 planned to undergo an In-Vitro Fertilization (“IVF”) procedure and search for a surrogate mother
 12 in Russia since she cannot carry the pregnancy herself. **Complaint at p. 4.**

13 While in Russia, Plaintiff emailed a translated document from her Russian OB/GYN
 14 explaining that she was in the Russian registry to receive an IVF procedure. **Complaint**
 15 **attachment 2.** Plaintiff updated her supervisors on her IVF procedure by email and informed
 16 them that she was staying in Russia a month longer than originally predicted. **Complaint at p. 6,**
 17 **7.** Plaintiff requested additional time off, and her supervisor replied stating that Plaintiff had been
 18 let go. **Complaint at p. 7.** Plaintiff returned to the United States after remaining in Russia for
 19 another month. **Complaint at p. 7, 8.**

20 In a mediation proceeding, Plaintiff learned that her supervisor submitted her LWOP
 21 request to the Director of Nursing Services, who denied her request under the Family Medical
 22 Leave Act (“FMLA”) because she did not qualify for leave under the FMLA, which requires the
 23 employee to have worked for the employer for at least one year. **Complaint at p. 8.** The
 24 supervisor explained that a letter stating Plaintiff’s leave was denied was mailed to her home and
 25 could not be emailed to Plaintiff in Russia because it was against VAMC policy. **Complaint at**
 26 **p. 8, 9.** After the VAMC refused to reinstate her, Plaintiff learned that the VAMC hired two
 27 younger male monitor technicians. **Complaint at p. 9.** This led Plaintiff to file claims for
 28

pregnancy discrimination, sex discrimination, age discrimination, and disability discrimination against the VAMC. **Complaint at p. 10-21** (Causes of Action 1 through 4).

Plaintiff moved from New Mexico to California, where she applied for Unemployment Insurance benefits. **Complaint at p. 8**. She did not receive the benefits because the Employment Development Department (“EDD”) learned that Plaintiff was let go for cause. **Complaint at p. 9**. Plaintiff alleges the VAMC committed libel when her supervisor told the EDD that she was discharged for cause because she traveled to Russia without approved leave. **Complaint at p. 21** (Fifth Cause of Action).

Plaintiff alleges the VAMC intentionally caused her emotional distress (“IIED”) by relieving her of her position at the VAMC and depriving her of the opportunity to have children. **Complaint at p.21-22** (Sixth Cause of Action).

Finally, Plaintiff alleges the VAMC deprived her of liberty or property in violation of the Fifth Amendment of the United States Constitution. **Complaint at p. 22-23** (Seventh Cause of Action). She claims the VAMC deprived her of the liberty to work and of any property she would have purchased if she was still employed at the VAMC. **Complaint at p.23**.

All of Plaintiff’s seven claims arise from her employment at the VAMC. Her prayer for relief requests reinstatement, back pay, compensatory damages of five million dollars, attorney’s fees, and punitive damages for libel in the amount of two million dollars. **Complaint at p. 24-25**.

² Many of the “facts” presented in this motion are **based on Plaintiff’s allegations**. Defendant presents these facts for purposes of this motion only. Should this case proceed beyond this motion, Defendant may present evidence disputing certain allegations.”

My objections. The plain language of Ms. Cormier’s October 09, 2018 Motion to Dismiss my Original June 25, 2018 Complaint clearly stated that Ms. Cormier wrote her Motion to Dismiss **based on the allegations of my Complaint** and **without** following the requirements of 38 CFR § 14.514(a) as follows:

5) A copy of my Complaint was never forwarded to the General Counsel

6) The General Counsel never took any necessary action to obtain **the pertinent facts**

1 7) The General Counsel never obtained the pertinent facts, and the General Counsel
2 never cooperated with the U.S. Department of Justice

3 8) The General Counsel never advised the Regional Counsel about whether or not any
4 further action is required.

5 Please, notice that Ms. Cormier **didn't** attach a Declaration that was signed a Regional
6 Counsel or a General Counsel who would declare under the penalty of perjury and under the
7 Federal laws that:

8 1) The Regional Counsel and/or the General Counsel obtained the material facts of my
9 lawsuit No. 3:18-cv-03748-JCS

10 2) The General Counsel authorized the U.S. Department of Justice to act on behalf of
11 both the U.S. Department of Veterans Affairs and Secretary Wilkie in the lawsuit No.
12 3:18-cv-03748-JCS

13 3) The General Counsel transferred the pertinent facts of the case to the U.S.
14 Department of Justice

15 4) Everything Ms. Cormier wrote in her October 09, 2018 Motion to Dismiss my
16 Original June 25, 2018 Complaint No. 3:18-cv-03748-JCS was a true and genuine
17 point of view of the U.S. Department of Veterans Affairs and Secretary Wilkie

18 5) Everything Ms. Cormier wrote in her October 09, 2018 Motion to Dismiss my
19 Original June 25, 2018 Complaint No. 3:18-cv-03748-JCS was true and correct.

20 Therefore, being not compliant with both 28 U.S.C. § 1746 and the F.R.C.P. Rule 11(b),
21 Ms. Cormier's October 09, 2018 Motion to Dismiss was hearsay that was not supposed to be
22 reviewed. Regardless, on December 03, 2018 Alsup granted this Motion to Dismiss in full,
23 dismissed my entire Complaint, denied my Motion for Preliminary Injunction, denied my request
24 to appoint a Counsel, and cruelly tortured and humiliated me.

25 On June 04, 2021, AUSA Zack filed a frivolous, unsworn, and unauthorized Answer to
26 my Original June 25, 2018 Complaint. There was no indication that:

27 1) The Regional Counsel and/or the General Counsel obtained the material facts of my
28 lawsuit No. 3:18-cv-03748-JCS

- 2) The General Counsel authorized the U.S. Department of Justice to act on behalf of both the U.S. Department of Veterans Affairs and Secretary McDonough in the lawsuit No. 3:18-cv-03748-JCS
- 3) The General Counsel transferred the pertinent facts of the case to the U.S. Department of Justice
- 4) Everything Zack wrote in her June 04, 2021 Answer to my Original June 25, 2018 Complaint No. 3:18-cv-03748-JCS was a true and genuine point of view of the U.S. Department of Veterans Affairs
- 5) Everything Zack wrote in her June 04, 2021 Answer to my Original June 25, 2018 Complaint No. 3:18-cv-03748-JCS was true and correct.

The June 04, 2021 Zack's Answer is frivolous and harassing because it contradicts the November 18, 2021 Memorandum in Appeal No, 19-16395 **that Robinson didn't challenge**. Specifically, the 9th Circuit ruled that, page 3, "Drevaleva alleged that her supervisors fraudulently concealed available leave options when she requested time off to travel to Russia to continue her in vitro fertilization procedures in Russia, imposed additional requirements on her application for leave without pay that were inconsistent with the agency's policies, and failed to provide a full explanation of the reason for her leave to the medical staff responsible for approving the leave request. At this early stage in the proceedings, these allegations are sufficient to warrant proceeding to summary judgment."

Page 4, "Drevaleva alleged that she was denied leave for her alleged disability and terminated even though she made a proper request that was approved by her supervisor. Liberally construed, these allegations, in conjunction with those discussed above with respect to Drevaleva's Title VII claim, are sufficient to warrant proceeding to summary judgment."

Please, notice that the 9th Circuit ruled that I had left my job at the Raymond G. Murphy VAMC with permission of my Supervisor. Please, notice that AUSA Robinson **didn't** file any Petition for Rehearing, and she **didn't** attempt to challenge the ruling of the 9th Circuit that I had left my job with a permission of my Supervisor. Please, notice that in her frivolous June 04, 2021

1 Answer, AUSA Zack reiterated a Libel that I had been properly fired from my job at the New
2 Mexico VA Health care System for failure to follow the proper steps to obtain a LWOP. Because
3 Zack's assertions contradict the November 18, 2020 Memorandum Appeal No, 19-16395, Zack's
4 June 04, 2021 Answer shall be stricken in its entirety.

5 Please, notice that in her Opposition to my First and Second Motions to Strike Zack
6 failed to describe every **fact** of the case and failed to explain **why** every particular sentence in
7 her June 04, 2021 Answer should not be stricken.

8 In her June 04, 2021 Answer, Zack's violated 28 CFR Part 77 - ETHICAL
9 STANDARDS FOR ATTORNEYS FOR THE GOVERNMENT

10 Read 28 CFR § 77.1 - Purpose and authority,

11 "(a) The Department of Justice is committed to ensuring that its attorneys perform their
12 duties in accordance with the highest ethical standards. The purpose of this part is to implement
13 28 U.S.C. 530B and to provide guidance to attorneys concerning the requirements imposed on
14 Department attorneys by 28 U.S.C. 530B.

15 (b) Section 530B requires Department attorneys to comply with state and local federal
16 court rules of professional responsibility, but should not be construed in any way to alter federal
17 substantive, procedural, or evidentiary law or to interfere with the Attorney General's authority to
18 send Department attorneys into any court in the United States.

19 (c) Section 530B imposes on Department attorneys the same rules of professional
20 responsibility that apply to non-Department attorneys, but should not be construed to impose
21 greater burdens on Department attorneys than those on non-Department attorneys or to alter rules
22 of professional responsibility that expressly exempt government attorneys from their application.

23 (d) The regulations set forth in this part seek to provide guidance to Department attorneys
24 in determining the rules with which such attorneys should comply."

25
26 Read 28 U.S. Code § 530B - Ethical standards for attorneys for the Government,
27
28

“(a) An attorney for the Government **shall** be subject to State laws and rules, and local Federal court rules, governing attorneys in each State where such attorney engages in that attorney’s duties, to the same extent and in the same manner as other attorneys in that State.

(b) The Attorney General shall make and amend rules of the Department of Justice to assure compliance with this section.

(c) As used in this section, the term “attorney for the Government” includes any attorney described in section 77.2(a) of part 77 of title 28 of the Code of Federal Regulations and also includes any independent counsel, or employee of such a counsel, appointed under chapter 40.

(Added Pub. L. 105–277, div. A, § 101(b) [title VIII, § 801(a)], Oct. 21, 1998, 112 Stat. 2681–50, 2681–118.)”

Zack’s reliance on the F.R.C.P. Rule 12(g)(2) is improper because I followed Rule 12(g)(1),

“(1) *Right to Join*. A motion under this rule **may be joined with any other motion allowed by this rule.**”

Now, I am responding to Zack’s particular statements in her Opposition to my First and Second Motions to Strike.

Read the Opposition, page 2, lines 15-22, “First, Plaintiff alleges that the answer states that Plaintiff was not eligible for FMLA leave and that this is immaterial. See ECF No. 412 at 27. However, the statement in **Defendants**’ answer only admits that Ms. Dunkelberger informed Plaintiff that she did not qualify for FMLA leave, which Plaintiff alleged Ms. Dunkelberger said in her complaint. Compare ECF No. 2 at 4:21-5:2 with ECF No. 396 at 4:2-5. Defendants’ answer makes no further averment beyond what Plaintiff herself alleged. If **Defendants**’ answer regarding this issue is immaterial, then so too is Plaintiff’s allegation. Because **Defendants** were merely responding to Plaintiff’s allegations, this portion of the answer need not be stricken.”

My objection. The initial *first* matter is that Zack doesn’t have a right to use the word “Defendants” because, absent a Declaration under the penalty of perjury and under the Federal

laws pursuant to 28 U.S.C. § 1746 that is signed by real Defendants (1) the U.S. Department of Veterans Affairs and (2) Secretary McDonough, Zack's June 04, 2021 Answer is hearsay because it doesn't represent any Defendants. The June 04, 2021 Answer represents only the personal interests of Manager Ms. Carla Dunkelberger who is not named a Defendant in the lawsuit No. 3:18-cv-03748-JCS. I believe that Robinson, Winslow, and Zack could have possibly conspired with Dunkelberger, possibly for a bribe, with a criminal goal to prevent me from obtaining relief. I am emphasizing that the allegations of a conspiracy and a bribe are only my allegations that are not supported by any piece of evidence.

Second, because Robinson didn't file any Petition for Rehearing of the November 18, 2020 Memorandum in Appeal No, 19-16395, and because Robinson didn't attempt to challenge the ruling of the 9th Circuit that I had left my job at the New Mexico VA Health Care System with a permission of my Supervisor, Zack doesn't have a right to harass me by reinstating a Libel that I was fired because I hadn't qualified for the Leave Without Pay pursuant to the Family and Medical Leave Act.

Third, please, read again Zack's June 04, 2021 Answer, page 4, lines 2-5, "4:21-5:2: Defendants admit that on April 18, 2017, Ms. Dunkelberger informed Plaintiff that she did not qualify for Family Medical Leave Act ("FMLA") leave because Plaintiff had less than one year of service with the VA. Defendants are without sufficient knowledge to admit or deny the remaining factual allegations in this paragraph and, on that basis, deny those allegations."

Please, read my First Motion to Strike, from page 23, line 22 to page 24, line 13, "It is undisputed that Ms. Dunkelberger and Mr. Johnson didn't inform me about a wide variety of available paid leave options for pregnancy and childbirth. Please, see the Handbook on Leave and Workplace Flexibilities for Childbirth, Adoption, and Foster Care (Docket 251.)

It is undisputed that both Ms. Dunkelberger and Mr. Johnson informed me only about a Leave Without Pay (a LWOP.) I requested a Leave Without Pay because I didn't know that paid leave options were available and not because I didn't need money when I was in Russia.

I declare under the penalty of perjury and under the Federal laws that I told Ms. Dunkelberger that I had waited for 9 months for my opportunity to perform another free of

1 charge IVF procedure in Russia and that I couldn't afford to pay 15 thousand U.S. dollars for an
2 IVF attempt in the United States. Also, I declare under the penalty of perjury and under the
3 Federal laws that I said to Ms. Dunkelberger that I didn't have an opportunity to wait for one
4 year to perform n IVF procedure until I am eligible for an FMLA leave because I had only a few
5 hormonal pills left, and these pills were not available in the United States, and I needed to go to
6 Russia to perform an IVF attempt because I waited for this opportunity for 9 months, that I was
7 50yo, and that my chances to have a child were very small.

8 I am respectfully asking the Court to strike Defendants' phrase, page 4, lines 4-5,
9 "Defendants are without sufficient knowledge to admit or deny the remaining factual allegations
10 in this paragraph and, on that basis, deny those allegations" because I declare under the penalty
11 of perjury and under the Federal laws that my statement is true."

12 Please, notice that I **didn't** ask the Court to strike the phrase "Defendants admit that on
13 April 18, 2017, Ms. Dunkelberger informed Plaintiff that she did not qualify for Family Medical
14 Leave Act ("FMLA") leave because Plaintiff had less than one year of service with the VA."

15 I **asked** the Court to strike the phrase "Defendants are without sufficient knowledge to
16 admit or deny the remaining factual allegations in this paragraph and, on that basis, deny those
17 allegations" for the reasons stated above.

18
19 Read Zack's Opposition to my Motions to Strike, from page 2, line 23 to page 3, line 2,
20 "Second, Plaintiff alleges that her failure to submit medical certification with her request for
21 leave without pay, her failure to provide a translated medical certification, and the disapproval of
22 her request for leave without pay are immaterial. See ECF No. 412 at 27. However, Defendants'
23 averment in this regard bears an important relationship to Defendants' defense, and thus is not
24 immaterial. Courts do not grant motions to strike "unless it is clear that the matter sought to be
25 stricken could have no possible bearing on the subject matter of the litigation." *Ally Bank v.*
26 *Castle*, No. 11-CV-896 YGR, 2013 WL 75776, at *2 (N.D. Cal. Jan. 4, 2013). Because the
27 importance of Defendants' averment is meaningfully disputed at this point in the case, it should
28 not be stricken."

1 My objection. Again, the *first* matter is that **real** Defendants in the lawsuit No. 3:17-cv-
 2 03748-JCS (1) the U.S. Department of Veterans Affairs and (2) Secretary McDonough **didn't**
 3 respond to my June 25, 2018 Complaint. On June 04, 2021, AUSA Zack who represented the
 4 personal (not official) interests of Ms. Dunkelberger responded to my June 25, 2018 Complaint.
 5 Please, notice that Ms. Carla Dunkelberger is **not** a Defendant in the lawsuit No. 3:18-cv-03748-
 6 JCS.

7 *Second*, Zack's assertions that "Defendants' averment in this regard bears an important
 8 relationship to Defendants' defense, and thus is not immaterial" is irrelevant because it
 9 contradicts the November 18, 2020 Memorandum of the 9th Circuit in Appeal No. 19-16395,
 10 page 3, "Drevaleva alleged that her supervisors fraudulently concealed available leave options
 11 when she requested time off to travel to Russia to continue her in vitro fertilization procedures in
 12 Russia, imposed additional requirements on her application for leave without pay that were
 13 inconsistent with the agency's policies, and failed to provide a full explanation of the reason for
 14 her leave to the medical staff responsible for approving the leave request. At this early stage in
 15 the proceedings, these allegations are sufficient to warrant proceeding to summary judgment."

16 Please, notice that Robinson **didn't** file any Petition for Rehearing. Therefore, Zack is
 17 ineligible to reiterate the previous "important defense" (1) that I was fired because I hadn't
 18 presented my medical documentation prior to my leave, (2) that I didn't translate my medical
 19 document into English language prior to my leave, and (3) that my request for a LWOP was
 20 disapproved. This "important defense" doesn't exist anymore, and any attempt to re-assert this
 21 "defense" shall be stricken.

22
 23 Read Zack's Opposition, page 3, lines 3-10, "Apart from these few instances over the
 24 course of both motions, Plaintiff has not otherwise sought to strike a response or averment that
 25 "do[es] not pertain . . . to the issues in question." Nor are the other portions which Plaintiff
 26 seeks to strike of "no essential or important relationship to the claim for relief." Rather,
 27 Plaintiff mostly disagrees with a number of the facts as admitted or denied by Defendants. Such
 28 disagreement is not grounds for a motion to strike. See *Thompson v. APM Terminals Pac. Ltd.*,

No. C 10-00677 JSW, 2010 WL 11614349, at *2 (N.D. Cal. June 29, 2010) (“This position is the Defendant’s right to assert and the motion to strike the assertion is DENIED.”).”

My objection, I am repeating my argument that in her June 04, 2021 Answer AUSA Zack **didn’t** represent the interests of Defendants the U.S. Department of VA and Secretary McDonough. Under no circumstances Zack had any right to represent the interests of Ms. Carla Dunkelberger who is **not** a Defendant in the lawsuit No. 3:18-cv-03748-JCS. In my two Motions to Strike, I demonstrated by the preponderance of the evidence that Zack fraudulently concealed the essential material facts of the case. It was done if furtherance of “defending” Ms. Carla Dunkelberger who is **not** a Defendant in the lawsuit No. 3:18-cv-03748-JCS. However, real Defendants the U.S. Department of VA and Secretary McDonough have the essential facts of the case such as: my date of birth, my qualifications (a certificate of an EKG Technician and my Resume), my place of birth, my citizenship, etc.

Any Zack’s assertion that “Defendants” don’t know my age and don’t know my place of birth etc. shall be stricken because **real** Defendants the U.S. Department of VA and Secretary McDonough indisputably have this information.

Read Zack’s Opposition, from page 3, line 11 to page 4, line 8, “To the extent Plaintiff moves to strike outside of the structure of Rule 12(f) regarding Defendants’ denials due to lack of sufficient knowledge, those contentions should also be rejected. A denial due to lack of sufficient knowledge or information is appropriate where, after reasonable investigation, “the pleader lacks sufficient data to justify his interposing either an honest admission or a denial of an opponent’s averments.” ... Here, Defendants conducted a reasonable investigation of Plaintiff’s allegations, as is evident from the large portion of Plaintiff’s complaint that Defendants admitted. The instances in which Plaintiff objects to Defendants’ lack of information largely pertain to whether Defendants were able to determine the exact scope and contents of conversations that occurred four years ago. See, e.g., ECF No. 411 at 14 (objecting to Defendants’ lack of information despite Defendants largely admitting the details of conversations that occurred in April and May 2017), 19 (same), 20 (same), 21 (same). In the few other objections raised by

Plaintiff, the information which Defendants lacked is held by another government agency (with respect to Plaintiff's immigration and naturalization status), *id.* at 8, or would require significant investigation with third parties to verify (with respect to the truthfulness of Plaintiff's allegations regarding her age and credentials and regarding her allegations concerning her contact with her doctor in Russia), *id.* at 9-10, 26. Such denials on the basis of lack of sufficient knowledge are therefore made in good faith and are proper under the Rules. See *Genetic Techs. Ltd. v. Agilent Techs., Inc.*, No. CV 12-01616 RS, 2014 WL 3908192, at *1 (N.D. Cal. Aug. 11, 2014) (denying a motion to strike where the defendant's "answer does not represent an effort to avoid taking a position on the truth or falsity of any specific allegation of fact."). To the contrary, Defendants have complied with Federal Rule of Civil Procedure 8, submitting admissions or denials of the factual allegations asserted against them and fairly responding to the substance of Plaintiff's allegations when denying. See Fed. R. Civ. P. 8(b)(1)(B) & (2). The Court should deny Plaintiff's motions to strike."

My objection. Real Defendants the U.S. Department of VA and Secretary McDonough **have and know** all information about me. Any Zack's assertion that "Defendant" Ms. Carla Dunkelberger doesn't know my age, my place of birth, my immigration status, etc. shall be stricken because Ms. Dunkelberger is **not** a Defendant in the lawsuit No. 3:18-cv-03748-JCS.

Read Zack's Opposition, page 4, lines 9-22,

"C. Plaintiff's Requests For Judicial Notice Should Be Denied"

Within Plaintiff's second motion to strike is a request for judicial notice. See ECF No. 412 at 17-26. Plaintiff's request should be denied because the materials Plaintiff seeks to judicially notice are not adjudicative facts not subject to reasonable dispute. The facts sought to be noticed are part of those that form the basis of the dispute between the parties and are therefore subject to reasonable dispute. Therefore, they do not fall within Federal Rule of Evidence 201. See Fed. R. Evid. 201 advisory committee's note (1972) ("The rule proceeds upon the theory that these considerations call for dispensing with traditional methods of proof only in clear cases." (emphasis added)); *Smith v. NetApp, Inc.*, No. 19-CV-04801-JST, 2021 WL

1233354, at *3 (N.D. Cal. Feb. 1, 2021) (“[A] court cannot . . . use the doctrine to resolve factual disputes.”) (citation omitted). Additionally, some of the “facts” which Plaintiff seeks to notice are actually legal arguments. See ECF No. 412 at 24-28. “A request for judicial notice is not a proper vehicle for legal argument.” *Blye v. California Supreme Ct.*, No. CV 11-5046-DWM, 2014 WL 295022, at *1 (N.D. Cal. Jan. 21, 2014). The Court should deny Plaintiff’s request for judicial notice.”

My objection.

Read the F.R.E. Rule 201,

“(a) **Scope.** This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

(b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court’s territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.”

“Undisputed matters of public record may be noticed under Federal Rules of Evidence 201(b).” *Lee v. City of Los Angeles*, 250 F. 3d 668, 689 (9th Cir. 2001).

The adjudicative facts and undisputed matters of public record are:

- 1) That Ms. Dunkelberger accused me in (1) failing to provide my medical documentation (2) on English language (3) prior to my leave. It is immaterial, see 5 CFR § 630.1208(a), (d), and (g)
- 2) That Ms. Dunkelberger placed me on the AWOL starting May 21, 2017 in violation of 5 CFR § 630.1208(i)
- 3) That Ms. Dunkelberger fired me without giving me a Notice and an opportunity to be heard in violation of both the Substantive and the Procedural Due Process Clauses of the Fifth Amendment to the U.S. Constitution.

Conclusion.

For the reasons stated above, I am respectfully asking the District Court to strike Zack's June 04, 2021 Answer **in its entirety** because:

- 1) It **didn't** represent the true and genuine interests of true Defendants (1) the U.S. Department of Veterans Affairs and (2) Secretary McDonough who, indisputably, have all factual and documentary information about me including my date of birth, my place of birth, my immigration status, my certification as an EKG Technician, etc.
- 2) It represented the personal interests of Ms. Carla Dunkelberger who is **not** a Defendant in the lawsuit No. 3:18-cv-03748-JCS
- 3) It was filed in violation of 38 CFR § 14.514(a) without any evidence that:
 - a) The General Counsel obtained the material facts of the case
 - b) The General Counsel coordinated with the U.S. Department of Justice regarding my lawsuit No. 3:18-cv-03748-JCS
 - c) The General Counsel instructed the Regional Counsel about whether or not any further action in my lawsuit No. 3:18-cv-03748-JCS is required
- 4) It was unsworn in violation of 28 U.S.C. § 1746
- 5) It was filed in violation of the F.R.C.P. Rule 11(b.)

I declare under the penalty of perjury and under the Federal laws that all foregoing is true and correct. Executed at San Francisco, CA on July 04, 2021.

Respectfully submitted,

s/ Tatyana Drevalova



Plaintiff Pro Se

July 04, 2021.